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Paper No. 9

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In re Application of
Liu and Fung
Application No. 09/858,334
Filed: May 15, 2001
Attorney Docket No. WIW-009.01
For: SYSTEM AND METHGODS FOR ACCENT
CLASSIFICATION AND ADAPTATION

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JUL 02 2004

OFFICE OF PETITIONS

: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a) AND
: DISMISSAL OF PETITION
: UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.47(a) filed April 27, 2004. This is also a decision on the petition under 37 CFR 1.137(b) filed on April 27, 2004.

The petition under 37 CFR 1.47(a) is **dismissed**.

The petition under 37 CFR 1.137(b) is also **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Failure to respond will result in the abandonment of this application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a) and Petition Under 37 CFR 1.137(b).

The above-identified application became abandoned on September 17, 2001, for failure to timely respond to the Notice to File Missing Parts of Nonprovisional Application mailed July 16, 2001. The notice allowed an extendable period of two-month period for response. No response was received within the allowed period and the application became abandoned on September 17, 2001. A Notice of Abandonment was mailed on October 23, 2003.

TREATMENT UNDER 37 CFR 1.47(a)

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee,
- (4) a statement of the last known address of the non-signing inventor,

The instant petition lacks item (1) as set forth above.

As to item (1), the statement of the alleged unavailability of the non-signing inventor is not sufficient because it does not demonstrate a level of diligence that is comprehensive, yet reasonable. It appears that petitioner only sought the non-signing inventor at this last known place of employment. There is no indication that petitioner attempted to find a residential address for the non-signing inventor. Further to this point, Section 409.03(d) of the *Manual of Patent Examining Procedure* (MPEP) provides, in pertinent, part that:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement.

The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

In this case, a sufficient showing of diligence might include searches of the Internet for the non-signing inventor and of the national registry. Any renewed petition under 37 CFR 1.47(a) filed must be accompanied by a statement establishing that a diligent effort was made to locate inventor Fung and appropriate documentation corroborating said efforts.

TREATMENT UNDER 37 CFR 1.137(b)

The petition under 37 CFR 1.137(b) is also dismissed.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition lacks item (1) above.

The Notice to File Missing Parts of Nonprovisional Application required a proper oath or declaration to be filed. Because the declaration filed is missing the signature of inventor Fung and the petition under 36 CFR 1.47(a) was not successful, a proper response to the last Office communication in accordance with 37 CFR 1.137(b) has not been filed. Any renewed 1.137(b) petition filed must be accompanied by a declaration signed by inventor Fung or a grantable petition under 37 CFR 1.47.

The Change of Correspondence Address and Docket Number, filed April 27, 2004, is noted, however, the requested change cannot be entered at this time as the request is made by an attorney that does not have proper power of attorney in this application. The declaration filed that appoints the firm of Foley Hoag, LLP is only signed by one of the two named inventors and the petition under 37 CFR 1.47 was not successful. Absent a petition to accept the power of attorney signed by only one of the two name inventors or a declaration executed by inventor Fung, the power of attorney will not be entered and the firm of Foley and Hoag, LLP will not be permitted to make any changes to the correspondence address. Further, the assignee that signed the Power of Attorney, NuSuara Technologies, SDN BHD has not yet been recognized by the Office as an assignee of this application. The assignee is still listed as Weniw.com, Inc. in Office records. Accordingly, the Power of Attorney executed by the officer of NuSuara will not be entered until such time as NuSuara is established in Office records as an assignee for the application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents,
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

Telephone inquiries should be directed to the undersigned (703) 305-0010.



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